

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

DERRICK MONTRELL HENLEY, #113918

PETITIONER

VERSUS

CAUSE NO. 4:13-cv-87-CWR-FKB

ARTHUR L. SMITH, Warden

RESPONDENT

MEMORANDUM OPINION

This matter is before the Court, *sua sponte*, for consideration of dismissal. Petitioner Derrick Montrell Henley, an inmate at the Carroll/Montgomery Regional Facility, Vaiden, Mississippi, files this petition for habeas corpus relief pursuant to 28 U.S.C. § 2254.

I. Background

Petitioner states that he was convicted on November 7, 2012, of possession of burglary tools in the Circuit Court of Neshoba County, Meridian, Mississippi. Pet. [1] at 1. He received a five-year sentence. *Id.* Petitioner's grounds for habeas relief are as follows:

- Ground 1 - [Petitioner was] convicted of a crime [he] was never charged with.
- Ground 2 - The court exceed[ed] the statute of limitation on getting [Petitioner] to trial.
- Ground 3 - The way [Petitioner's] trial was being conducted.
- Ground 4 - The testif[y]ing officer [was] lying on [the] stand.
- Ground 5 - Officer saying my headlights were off.
- Ground 6 - Fraudulent evidence.
- Ground 7 - My witnesses were never called.

Id. at 2-11. Additionally, Petitioner states that he has not presented these grounds to a higher state court because of his lack of resources and lack of knowledge in the area of the law. *Id.* at 13.

II. Analysis

After reviewing Petitioner's application for habeas corpus relief and applying a liberal construction as required by *Haines v. Kerner*, 404 U.S. 519 (1972), the Court has come to the following conclusions.

Pursuant to 28 U.S.C. § 2254(b)(1), “a defendant must exhaust all claims in state court prior to requesting federal collateral relief.” *Smith v. Quarterman*, 515 F.3d 392, 400 (5th Cir. 2008)(citing *Beazley v. Johnson*, 242 F.3d 248, 263 (5th Cir. 2001)). In order to meet the exhaustion requirement of 28 U.S.C. § 2254(b)(1), the habeas claim must have been fairly presented to the highest state court. *Morris v. Dretke*, 379 F.3d 199, 204 (5th Cir. 2004)(citing *Mercadel v. Cain*, 179 F.3d 271, 275 (5th Cir. 1999)). A petitioner is not excused from exhausting available state court remedies merely because he is *pro se* or ignorant of the law. *See Fisher v. Johnson*, 174 F.3d 710, 714 n. 13 (5th Cir. 1999)(citing *Saahir v. Collins*, 956 F.2d 115, 118-19 (5th Cir. 1992)(providing that *pro se* status and ignorance of the law does not constitute “cause” for failing to present a legal claim in a petition previously filed)); *Hannah v. Conley*, 49 F.3d 1193, 1196-97 (6th Cir. 1995)(citing *Ewing v. McMackin*, 799 F.2d 1143, 1151 (6th Cir. 1986)(determining that status as a *pro se* litigant does not excuse the failure to raise issues in state court)). As a general matter, a habeas petition is dismissed when the petitioner has not exhausted his claims in state court. *See Smith*, 515 F.3d at 400 (citing 28 U.S.C. § 2254(b)(1)(A); *Rose v. Lundy*, 455 U.S. 509, 519-20 (1982)).

Under Mississippi law, Petitioner has an available state remedy under the Mississippi Post-Conviction Collateral Relief Act, Mississippi Code Annotated §§ 99-39-1 to -29 (1972), as amended. Petitioner has three years after the entry of judgment of the conviction to file a motion under this statute. Miss. Code Ann. §§ 99-39-5 (2) (1972), as amended. Petitioner states that he was sentenced on November 9, 2012, and is clearly within the time period to file such a motion. Pet. [1] at 1. Because Petitioner has not exhausted his available state court remedies through the Mississippi Post-Conviction Collateral Relief Act, this Court finds that Petitioner has not met the exhaustion requirement of 28 U.S.C. § 2254(b)(1)(A) and (c) and is not excused from meeting such exhaustion

requirement, *see Fisher*, 174 F.3d at 714 n. 13. As such, Petitioner's request for habeas relief will be denied for failure to exhaust his state court remedies which are available to him.

III. Conclusion

Petitioner's request for habeas relief is dismissed without prejudice based on his failure to exhaust his state court remedies.

A Final Judgment in accordance with this Memorandum Opinion will be issued this date.

This the 24th day of May, 2013.

s/Carlton W. Reeves
UNITED STATES DISTRICT JUDGE